

DOCKET NO. D-2012-010 CP-2

DELAWARE RIVER BASIN COMMISSION

**Eagle Point Power Generation, LLC
Eagle Point Cogeneration Facility
Surface Water Withdrawal and Electric Generating Consumptive Use
West Deptford Township, Gloucester County, New Jersey**

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on November 29, 2021 for renewal of an allocation of surface water associated with an electric generating facility designed to consumptive use in excess of 100,000 gallons per day. (Application). The withdrawal was approved by the New Jersey Department of Environmental Protection (NJDEP) on October 29, 2015, effective November 1, 2015 (Permit No. 2612P).

The Application was reviewed for continuation of this project in the Comprehensive Plan and for approval under Section 3.8 of the *Delaware River Basin Compact*. The Gloucester County Planning Board has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on November 9, 2022.

A. DESCRIPTION

1. Purpose. The purpose of this docket is to renew the approval to withdraw up to 110.234 million gallons per month (mgm) of surface water and consumptively use up to 68.4 mgm of surface water from Intake No. DK-3 for power generation at the docket holder's Eagle Point Cogeneration Facility.

2. Location. Intake No. DK-3 is located on the Delaware River in Water Quality Zone 4 in West Deptford Township, Gloucester County, New Jersey.

Specific location information has been withheld for security reasons.

3. Area Served. Electricity produced by the EPCF is used to supply the Pennsylvania-Jersey-Maryland (PJM) grid. Water withdrawn from Intake No. DK-3 will be used only at the EPCF for cooling water purposes. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in the DECISION section of this docket.

4. Design Criteria. The electric generating station is a 237 MW combined cycle natural gas-fired facility located in West Deptford Township, Gloucester County, New Jersey. The facility includes one Alstom steam turbine, one Siemens steam turbine, two GE 7EA Natural gas-fired turbine generators, and two heat recovery steam generators used to generate electricity.

The facility utilizes one (1) source for water withdrawals – a surface water intake located on the Delaware River, just downstream of the confluence of Big and Little Timber Creeks and the Delaware River.

The EPPG intake structure consists of two 42-inch steel supply lines which are approximately 600-feet long and carry river water from under Dock 3 to a concrete pump house with fixed screens. The inside dimensions of the concrete wet well for the pump house are approximately 50 feet long by 28 feet wide and supported by concrete columns. Six additional pumps are located within the River Water Pump House that are owned and operated by Energy Transfer Partners (ETP). These pumps are for ETP emergency fire water protection system only. The total diversion for ETP is limited to 500 gpm, except in fire emergency situations.

The docket holder currently withdraws 1.00 million gallons per day (mgd) of water from the Delaware River via Intake No. DK-3 on average and 2.722 mgd as a maximum. The 10-year average and maximum water demand is expected to increase to 3.675 mgd and 5.328 mgd, respectively. The requested allocation of 110.234 mgm is based on the projected peak monthly use of 110.234 million gallons and should be sufficient to meet the future demands of the docket holder.

5. Facilities. The existing project intake has the following characteristics:

INTAKE NO.	WITHDRAWAL WATER BODY	PUMP CAPACITY	7Q10 FLOW AT INTAKE (CFS)	YEAR CONSTRUCTED
DK-3	Delaware River	3700 gpm	1420	1948

The intake is metered.

Prior to entering the distribution system, the water is filtered and softened.

A portion of water from DK-3 is conveyed to the adjoining Energy Transfer Partners facility for boiler makeup water and emergency fire suppression water.

6. Other. Wastewater is conveyed to the Eagle Point industrial wastewater treatment plant (IWTP) approved by the NJDEP in New Jersey Pollutant Discharge Elimination System (NJPDES) Permit No. NJ0005401 and will continue to be regulated in accordance with the Administrative Agreement enacted March 2015 by the Commission and the State of New Jersey. (DRBC OP-1968-053-2).

7. Relationship to the Comprehensive Plan. The project was previously included in the Comprehensive Plan by the Commission in Docket No. D-2012-010 CP-1 approved on December 5, 2012. Issuance of this docket will continue the project in the Comprehensive Plan.

B. FINDINGS

1. Drought Management and Contingency Plan and Consumptive Use Replacement Plan

Section 2.3.5.1 C. (18 CFR 401.36(c)) of the Commission's *Rules of Practice and Procedure (RPP)*, requires industrial and commercial water withdrawals in excess of one million gallons per day to develop a contingency plan including emergency conservation measures to be instituted in the event of a Commission declared drought or other water shortage. Resolution No. 83-14 amended the Commission's *Water Code* (Section 2.1.4) to include the conservation goal of a 15 percent reduction in depletive use during drought conditions. Additionally, Resolution No. 2018-5 requires that certain electric generating or cogenerating facilities develop or acquire sources of replacement water for use during critical hydrologic conditions as a condition of approval.

The Project is subject to the consumptive use makeup requirement as it a generating facility designed to consumptively use in excess of an average of 100,000 gallons per day of water during any 30-day period and the primary source of water is surface water located upstream of River Mile 38. Therefore, the following provision from Resolution No. 2018-5 is included as Condition C.10. in Section C. DECISION:

“For the duration of a critical hydrologic condition as announced by the Commission, on a daily basis the docket holder shall cause to be released from a replacement water source approved by the Commission an amount of water equal to the amount consumptively used by the docketed facility, multiplied by the applicable relative effect factor, if assigned. For the duration of such critical hydrologic condition, the docket holder shall operate its facility only at a level commensurate with the amount of replacement water it is capable of causing to be released.”

The docket holder’s CURP, dated January 2017, revised August 23, 2019 was approved by the Executive Director on September 11, 2019. An updated CURP, dated January 2017, revised November 29, 2021 was submitted with the withdrawal application. The CURP continues to indicate that it has executed a Water Resources Agreement with Eagle Creek Hydropower, LLC; Eagle Creek Land Resources, LLC; and Eagle Creek Water Resources, LLC (collectively Eagle Creek) for the acquisition of reservoir storage and provision of flow augmentation releases to offset consumptive use at the docket holder’s cogeneration facility. The agreement includes a 100-million-gallon storage reservation (up to 1.5 mgd or 2.325 cfs) and an effective term of 15 years (until December 21, 2032). The amount of storage was estimated by the docket holder to provide approximately 140 days of makeup water to offset consumptive use (using 2017 facility performance data). The flow augmentation releases made on behalf of the docket holder are in addition to the conservation releases required from the Eagle Creek facilities. The CURP is found to be consistent with the Commission’s Consumptive Use Replacement Policy for Power Generators (Resolution No. 20018-5). The docket holder

shall implement the CURP upon notice from the DRBC Executive Director (see Section C. DECISION Condition C.11.).

The docket holder shall provide the Commission with an updated CURP as necessary to provide updated personnel contact information. Additionally, an updated CURP is required to be submitted for review and approval by the Commission Executive Director, if the replacement source, rates or volumes contained in the approved CURP change in the future.

2. Surface Water Charges

The docket holder shall pay for surface water use in accordance with the provisions of Resolution No. 74-6, as amended as described in Section C. DECISION Condition C.2.

3. Relationship with the New Jersey – DRBC Administrative Agreement

Basin water withdrawals such as the withdrawal described in this docket is a regulatory program eligible for administration under the One Permit Program. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement. The administrative agreement between the Commission and the New Jersey Department of Environmental Protection Dated March 2015, outlines the process whereby the DRBC and the NJDEP will follow a single process led by the NJDEP, and the NJDEP will issue a single permit that covers all the standards, rules, requirements, terms and conditions for each withdrawal that can be covered by the state's Water Allocation Program for withdrawals.

In accordance with 18CFR 401.42(i), upon NJDEP's final action on a future application for this withdrawal project, this docket will terminate as to all of its provisions and conditions that pertain to the water withdrawal regulatory program administered by NJDEP under the Administrative Agreement and the docket shall continue in effect as to any provisions and conditions not pertaining only to Covered Programs. The consumptive use allocation approval contained in Condition C.5. and the associated CURP requirement (Condition C.10.) are two such provisions of this docket that are not presently covered by the AA and will continue in effect. A separate DRBC application including a revised CURP shall be submitted for approval by the Commission if the project's consumptive use increases to a rate greater than the consumptive use allocation approved by this docket.

4. Other Findings

NJDEP Water Allocation Permit No. 2612P, issued by NJDEP on October 29, 2015, approved withdrawal limits of 110.234 mgm, 1,322.76 million gallons per year (mgy), and a maximum diversion rate of 3,700 gallons per minute (gpm). WAP No. 2612P was issued with a provision allowing Sunoco Logistics (now EPT) to withdraw water from Intake No. DK-3 for emergency fire protection. Any water used for emergency fire protection by EPT will be metered separately and reported by EPT and not count against the docket holder's allocation.

The docket holder reported that the maximum monthly consumptive use from 2019 through 2021 ranged from 51 percent to 62 percent of the total water withdrawal. These percentages equate to approximately 56.2 mgm to 68.4 mgm based on the allocation of 110.234 mgm. Consumptive losses are calculated as follows: The refinery filtered water use is determined from a flow meter that they maintain; The cooling tower loss is a calculated by gallons per minute loss (drift and evaporation) multiplied by the run time of the steam turbine for the associated cooling tower; and the steam venting loss (which represents a smaller relative fraction of the overall consumptive use) is calculated using the metered flow from the condensate storage tank considering a 90% consumptive use.

The project is designed to conform to the requirements of the *Water Code (WC)* and *Water Quality Regulations (WQR)* of the DRBC.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

C. DECISION

Effective on the approval date for Docket No. D-2012-010 CP-2 below, the project described in Docket No. D-2012-010 CP-1 is removed from the Comprehensive Plan to the extent that they are not included in Docket No. D-2012-010 CP-2; Docket No. D-2012-010 CP-1 is terminated and replaced by Docket No. D-2012-010 CP-2; and the project and the appurtenant facilities described in in Section A.4. (Design Criteria) and A.5. (Facilities) shall be continued in the Comprehensive Plan. The project and appurtenant facilities as described in in Section A.4. (Design Criteria) and A.5. (Facilities) are approved subject to the following conditions, pursuant to Section 3.8 of the *Compact*:

Monitoring and Reporting

1. The project withdrawals shall be metered by means of an automatic continuous recording device, flow meter, or other method, and shall be measured to within 5 percent of actual flow. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted for surface water withdrawals by the designated agency (NJDEP) if maintenance of the 5 percent performance is not technically feasible or economically practicable. Meters or other methods of measurement shall be subject to approval and inspection by the NJDEP as to the type, method, installation, maintenance, calibration, reading and accuracy. A record of daily withdrawals shall be maintained, and monthly totals shall be reported to the NJDEP quarterly and shall be available at any time to the Commission if requested by the Executive Director.

2. The docket holder shall pay for surface water use in accordance with *Administrative Manual – Part III Basin Regulations – Water Supply Charges 18 CFR Part 420*.

Other Conditions

3. During any month, the withdrawal from Intake No. DK-3 shall not exceed 110.234 million gallons. The intake shall not be pumped above the maximum rate and monthly allocation as indicated below except for fire protection purposes:

INTAKE NO.	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
DK-3	3,700	110.234

* Based on a 24-Hour Average

This allocation may be modified because of future permit actions by NJDEP in accordance with the March 2015 Administrative Agreement between the DRBC and the NJDEP.

4. During any month, the consumptive use shall not exceed 68.4 million gallons. Any increases in the consumptive use allocation requires a separate DRBC application and approval under Section 3.8 of the Compact.

5. EPT may withdraw water from Intake No. DK-3 for emergency fire protection purposes. Any water used for emergency fire protection shall be metered separately and reported by EPT and shall not be counted against the withdrawal limits imposed by Section C. DECISION Condition C.3.

6. In accordance with 18 CFR 401.8. of the Commission's *Rules of Practice and Procedure (RPP)*, if at any future time the Project is changed substantially from the Project as described in this docket, it will be deemed to constitute a new and different project for the purposes of Article 11 of the Delaware River Basin Compact and will require Commission amendment of the Comprehensive Plan. In accordance with the same section of the RPP, whenever a change to the Project is made, the sponsor must advise the Executive Director, who will determine whether the change is deemed substantial for purposes of this provision.

7. Section 2.3.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 401.41), limiting the Commission's approval to three years in the absence of an expenditure of substantial funds by the project sponsor in reliance on the approval, is hereby waived for good cause shown in accordance with Section 2.9.3 (18 C.F.R. 401.123) of the same regulations. This approval shall expire on the expiration date set forth below unless prior thereto the docket holder has applied to the Commission to renew or extend this approval.

8. The docket holder is responsible for timely submittal to the DRBC of a docket renewal application on the appropriate application form including the appropriate docket application filing fee (see 18 CFR 401.43) at least 6 months in advance of the docket expiration date set forth below. The docket holder will be subject to late filed renewal surcharges in the event of untimely submittal of its renewal application, whether or not DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. In the event that a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, to reissue the docket before the expiration date below, the terms and conditions of the current docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

9. For the duration of a critical hydrologic condition as announced by the Commission, on a daily basis the docket holder shall cause to be released from a replacement water source approved by the Commission an amount of water equal to the amount consumptively used by the docketed facility, multiplied by the applicable relative effect factor, if assigned. For the duration of such critical hydrologic condition, the docket holder shall operate its facility only at a level commensurate with the amount of replacement water it is capable of causing to be released.

10. The docket holder shall implement the CURP upon notice from the DRBC Executive Director.

11. Prior to any change of the approved replacement source described in facility's CURP, the docket holder shall submit a Consumptive Use Replacement Plan in accordance with Resolution No. 2018-5 to the Commission and receive written approval from the DRBC Executive Director.

12. The surface water intake and operational records shall be available at all times for inspection by the DRBC.

13. The surface water intake shall be operated at all times to comply with the requirements of the *WC* and *WQR* of the DRBC.

14. No water service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision 2).

15. The docket holder shall implement to the satisfaction of the NJDEP, a drought or other water supply emergency plan.

16. Sound practices of excavation, backfill and reseeding shall be followed to minimize erosion and deposition of sediment in streams from any new facilities or repair related construction.

17. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

18. The docket holder is permitted to provide the water approved in this docket to the areas included in Section A.3. Area Served of this docket. Any expansion beyond those included in Section A.3. Area Served is subject to DRBC review and approval in accordance with Section 3.8 of the *Compact*.

19. The docket holder shall be subject to applicable DRBC regulatory program fees, in accordance with duly adopted DRBC resolutions and/or regulations. (see 18 CFR 401.43).

20. This approval is transferable by request to the DRBC Executive Director provided that the project purpose and area served approved by the Commission in this docket will not be materially altered because of the change in project ownership. The request shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).

21. The docket holder shall request a name change of the entity to which this approval is issued if the name of the entity to which this approval is issued changes its name. The request for name change shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).

22. The issuance of this docket approval shall not create any private or proprietary rights in the water of the Basin, and the Commission reserves the rights to amend, alter or rescind any actions taken hereunder to ensure the proper control, use and management of the water resources of the Basin.

23. If the monitoring required herein or any other relevant data or information demonstrates that the operation of this project is interfering with or otherwise impairing existing uses of ground or surface water, or if the docket holder receives a complaint from an existing ground or surface water user within the zone of influence of the withdrawal alleging such interference or impairment, the permit holder shall immediately notify the Executive Director, and unless excused by the Executive Director, shall investigate the demonstrated or alleged impacts. For purposes of this condition, notification shall mean either (a) electronic transmittal of written notice to the Executive Director via email (using addresses posted on the DRBC website); or (b) written notice to the Executive Director and a telephone call to the Project Review Section at 609-883-9500, ext. 216. (Oral notification must always be accompanied by immediate written notification directed to the Executive Director.) In addition, the docket holder shall provide written notice to all potentially affected water users of the docket holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the docket holder's project withdrawal shall be repaired, replaced or mitigated at the docket holder's expense.** The scope of the options to consider for repair, replacement and/or mitigation shall not be limited solely to those that are owned, operated, or controlled by the project sponsor. An investigation report and/or mitigation plan prepared and certified by a licensed professional engineer and/or a licensed professional geologist shall be submitted to the Executive Director as soon as practicable following notice of the demonstrated or alleged impairment consistent with this paragraph. The Executive Director shall make the final determination regarding the scope and sufficiency of the investigation and the extent of any mitigation measures that may be required. Where ground and surface waters are rendered unavailable, unusable, or unsuitable for the pre-existing use, the Executive Director may direct the docket holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement or mitigation.

24. The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

25. During any water emergency or other non-emergency declaration by the Governor of New Jersey, NJDEP or the Commission, water service or use by the project docket holder pursuant to this docket approval shall be subject to any order or restriction governing those non-essential uses specified by the NJDEP to the extent that they may be applicable, and to any other emergency resolutions or orders adopted by the Commission.

26. Any person who objects to a docket decision by the Commission may request a hearing in accordance with Article 6 of the *Rules of Practice and Procedure*. In accordance with Section 15.1(p) of the *Delaware River Basin Compact*, cases and controversies arising under the *Compact* are reviewable in the United States district courts.

BY THE COMMISSION

APPROVAL DATE: December 7, 2022

EXPIRATION DATE: December 7, 2032